Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

207-VA-860

Record No. 6361

In the
Supreme Court of Appeals of Virginia
at Richmond

WALTER W. HORNER, ET AL.

v.

WILLARD M. AHERN, ET AL.

FROM THE CIRCUIT COURT OF CHESTERFIELD COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6361

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 28th day of February, 1966.

WALTER W. HORNER AND HARRIETTE M. HORNER,
Plaintiffs in error,

against

WILLARD M. AHERN, REEVES M. AHERN, T & T COMPANY, INC., KARL N. REIDELBACH AND B. L. DILLARD, III,
Defendants in error.

From the Circuit Court of Chesterfield County
William Old, Judge

Upon the petition of Walter W. Horner and Harriette M. Horner a writ of error is awarded them to orders entered by the Circuit Court of Chesterfield County on the 10th day of September, 1965, and the 13th day of September, 1965, in a certain motion for judgment then therein depending wherein the said petitioners were plaintiffs and Willard M. Ahern and others were defendants; upon the petitioners, or someone for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

MOTION FOR JUDGMENT

Plaintiffs, Walter W. Horner and Harriette M. Horner, husband and wife, hereby move the Court for judgment against the defendants, Willard M. Ahern, Reeves M. Ahern, T. & T. Company, Inc., a Virginia Corporation, Karl N. Reidelbach, and B. L. Dillard, III, in the amount of THIRTY SIX THOUSAND ONE HUNDRED FIFTY DOLLARS ($36,150.00) with interest from July 2, 1964, until paid, and costs of this action, which sum is justly due and owing to the plaintiffs by the defendants, for this, to-wit:

1. By written Real Estate Purchase Contract dated the 23rd day of April, 1964, Walter W. Horner and Harriette M. Horner agreed to purchase and Willard M. Ahern
page 2 } and Reeves M. Ahern agreed to sell for the sum of $22,500.00 certain real estate consisting of approximately 102 acres of land with all improvements thereon known as the Willard M. Ahern Estate and located on the South side of State Route 604 approximately one-quarter mile North of Genito Road in Chesterfield County, Virginia, upon the terms and conditions set forth in said Contract, a copy of which is hereto attached and marked EXHIBIT A.

2. The real estate broker which brought about said sale and prepared said contract was T. & T. Company, Inc., acting through it's agent or employee, Karl N. Reidelbach, as agent for Willard M. Ahern and Reeves M. Ahern, which said broker received a commission of Ten per centum (10%) of the sale price for having effectuated said sale.

3. The said contract contains a provision as follows:

"Purchaser wishes termite certificate furnished by seller.*"

and a footnote as follows:

"*If termites are present, seller will stand cost of treatment or, if termite damage is found purchaser may be relieved of the conditions of this contract."

4. By letter dated May 22, 1964, from T. & T. Company,

Inc. over the signature of Karl Reidelbach, addressed to Mr. W. W. Horner, a "Purchase Order to Termite-Bureau* of Real Estate Owners A Division of DeHiDrate* Inc." over the signature of J. Eugene Hunsberger, dated May 19, 1964, addressed to T. & T. Realtors was forwarded to Walter W. Horner, which said purchase order described in said letter as "copy of termite inspection for the property you have purchased on Genito Road from Mr. and Mrs. Willard Ahern," set forth, among other things, the following:

page 3 } "We have inspected the above property and found it to contain an infestation of termites. It has been chemically treated for the elimination and prevention of same for a period of ten (10) years or more as per the following guarantee. We have also inspected the property for other wood destroying infestation and found none to be present."

5. Relying solely upon the termite inspection report issued by the Termite-Bureau*, agent of sellers, and forwarded to them by the T. & T. Company, Inc. and representations of Karl N. Reidelbach, agent or employee of T. & T. Company, Inc., that there was no termite damage and having no indication of termite damage from said report or otherwise, the plaintiffs, on July 2, 1964, consummated the transaction, paid the purchase price therefor and accepted a deed to said property, and took possession thereof.

6. Upon taking possession of said premises, the plaintiffs began repairs and alterations in order to make the dwelling house suitable for their purposes as their own home, during the course of which it was for the first time discovered by plaintiffs that said dwelling was extensively damaged by termites to the extent that said dwelling, which if in good condition would be worth $12,000.00, would not be saleable to a purchaser knowing its termite damaged condition.

7. Upon discovering said termite damage, plaintiffs began an investigation and discovered that prior to July 2, 1964, the date of settlement, and prior to May 19, 1964, the date of the inspection by Termite-Bureau*, the T. & T. Company, Inc. had received a report from Orkin of Richmond, Va., an exterminating firm, dated May 12, 1964, which disclosed and reported extensive termite infestation and damage necessitating extensive repairs and treatment of the in-
page 4 } festation.

8. Defendant, T. & T. Company, Inc. acting

through its employees and agent, one of whom is B. L. Dillard, III, its office manager, and its principals concealed said report of Orkin from the plaintiffs and represented to the plaintiffs that while termites were present there was no damage and the infestation had been treated and guaranteed for ten (10) years or more.

9. Defendant, T. & T. Company, Inc. and its principals, Willard M. Ahern and Reeves M. Ahern, knew, or should have known of the termites and the then existing termite damage and of the report of damages by Orkin. By their failure to disclose to and inform the plaintiffs thereof the defendants did fraudulently represent that there was no termite damage when they, at the time of the report and at the time of settlement, knew, or should have known that there was, in fact, extensive damage, then existing.

10. Plaintiffs, relying solely upon the only report submitted to them and upon representations of employees and agents of T. & T. Company, Inc., and its principals, and having been fraudulently deprived of the prior report of Orkin, made settlement for the said real estate, but would have refused to consummate the transaction and would have demanded that they be relieved of the conditions of the contract had they been advised of the contests of the Orkin report and of the fact that there was extensive termite damage throughout a substantial part of the dwelling house.

11. The concealment and failure of disclosure of the report of Orkin as to termite damage and repairs and treatment required and the representations of defendants were material to the contract of purchase and such concealment and failure of disclosure has caused great damage to the

page 5 } plaintiffs.

12. That the defendants, Willard M. Ahern and Reeves M. Ahern knew, or should have known, that the dwelling house was infested with termites and had been damaged by termites and, notwithstanding, did fraudulently conceal such facts from the plaintiffs in order to induce them to purchase the real estate.

13. That before discovering the termite damage and relying upon the report submitted and representations made to them by the defendants, the plaintiffs expended funds in renovating and improving the dwelling house to suit their needs as their home to the extent of $6,075.00.

WHEREFORE, the plaintiffs move the Court for judgment in their behalf against the defendants for $18,075.00

compensatory damages and $18,075.00 exemplary or punitive damages, making a total of $36,150.00 with interest from July 2, 1964, until paid.

WALTER W. HORNER and
HARRIETTE M. HORNER
By ROBERT R. JONES
Counsel.

Filed in the Clerk's Office the 5th day of April, 1965.

WILLIAM R. SHELTON, Clerk
By MARGARET C. FOSTER, D. C.

* * * * *

page 6 }

EXHIBIT A

T & T COMPANY, INC.
2106 N. Hamilton
Richmond, Virginia 23230
Realtors 358-1541 Insurers Builders

REAL ESTATE PURCHASE CONTRACT

THIS CONTRACT, made this 23rd day of April, 1964, between Walter W. and Harriette Horner purchaser, and Willard M. and Reeves M. Ahern seller, (plural shall be substituted for singular and singular for plural whenever the context hereof so requires.)

WITNESSETH: That I agree to purchase through T&T CO., INC., REALTORS, for the consideration and upon the terms hereinafter stated, the real estate located in the County of Chesterfield, State of Virginia, all that certain lot or parcel of land together with all buildings and improvements thereon, designated as: Lot Number....Block Number.... Section....of Moseley District more commonly known as Address: Rt. 1 Moseley, Va. Plan: All of the property with all improvements known as the Willard M. Ahern Estate, approximately 102 acres more or less, with approximately 1850 feet fronting on the South side of State Route #604, approximately 1/4 mile North of State Route #605—Genito Road—according to attached plot plan.

Consideration and terms: Purchaser agrees to pay the sum

of ($22,500.00) All Cash, plus closing cost, to seller on settlement. *Purchaser wishes termite certificate furnished by seller.* If survey is requested, purchaser will bear all expenses.

This contract subject to purchaser securing satisfactory financing within 30 days. Seller agrees that purchaser may make whatever improvements desired to land and/or outside of the house upon settlement.

*If termites are present, seller will stand cost of treatment or, if termite damage is found purchaser may be relieved of the conditions of this contract. subject to conditions as set forth on reverse side hereof: all provided the title is free from valid objections, subject to existing restrictions and easements now on the property.

I hereby make a deposit of $100.00 as earnest money to be held in escrow by T&T CO., INC., REALTORS, which is to be applied to the purchase price on closing; or refunded if title is not marketable, or if mortgage is not approved applicable to the terms as herein above stated, provided proper application has been made, or should this offer not be accepted by the seller within 3 days from the date of this contract.

Possession of the said premises shall be delivered to purchaser upon closing. Settlement to be made at the office of T&T CO., INC., REALTORS, on or before 60 days from settlement or at a reasonable time thereafter. Taxes to be prorated as of the date of settlement.

Should either party default on the terms of this contract, the party so defaulting shall be liable for all commissions. The risk of loss or damage to said property by fire, windstorm or other cause is assumed by the seller until final settlement.

I have examined the above property and agree to accept it in its present condition except as may be specified above and agree that there are no additional written or verbal agreements except those set forth herein. This is a Virginia contract and represents the final understanding between purchaser and seller.

Witness our hands and seals in the State of Virginia this 30th day of April, 1964.

S/ WALTER W. HORNER (Seal)
(Purchaser)

S/ HARRIETTE M. HORNER (Seal)
(Purchaser)

DEPOSIT RECEIVED: $100.00
AGENT: Karl Reidelbach

I hereby agree to sell and convey with a General Warranty Deed complete with revenue stamps the property described hereon and accept the above proposal and acknowledge that T&T CO., INC., REALTORS, are the agents and sole procuring cause who brought about the sale of this property. I agree to pay T&T CO., INC., REALTORS, for services rendered, 10% of the selling price.

Witness our hands and seals in the State of Virginia this 1st day of May, 1964.

S/ WILLIARD M. AHERN (Seal)
(Seller)

S/ REEVES M. AHERN (Seal)
(Seller)

A CERTIFIED TRUE COPY:

T & T Company, Inc.
MARGARET S. HILLMAN

(on back)

Conditions: Purchaser wishes and seller agrees, that all heating units will be included with house. Also seller agrees to pay rent beginning 30 days from settlement at the rate of $100 monthly or $3.25 per day until vacated.

W. W. H.

* * * * *

page 13 }

* * * * *

DEMURRER

The defendant, T & T Company, Inc., a Virginia corporation, says that the motion for judgment filed against it in this case is not sufficient in law in that it fails to allege facts

which, if proven, would entitle the plaintiffs to recover against this defendant.

T & T COMPANY, INC.,
A VIRGINIA CORPORATION
By EDWARD P. SIMPKINS, JR.
Counsel.

* * * * *

page 14 }

* * * * *

Received and filed Apr. 26, 1965.

WILLIAM R. SHELTON, Clerk
By MARGARET C. FOSTER, D. C.

page 15 }

* * * * *

DEMURRER

The defendant, Karl N. Reidelbach, says that the motion for judgment filed against him in this case is not sufficient in law in that it fails to allege facts which, if proven, would entitle the plaintiffs to recover against this defendant.

KARL N. REIDELBACH,
By EDWARD P. SIMPKINS, JR.
Counsel.

* * * * *

page 16 }

* * * * *

Received and filed Apr. 26, 1965.

WILLIAM R. SHELTON, Clerk
By MARGARET C. FOSTER, D. C.

page 17 }

* * * * *

DEMURRER

The defendant, B. L. Dillard, III, says that the motion for judgment filed against him in this case is not sufficient in law in that it fails to allege facts which, if proven, would entitle the plaintiffs to recover against this defendant.

B. L. DILLARD, III
By EDWARD P. SIMPKINS, JR.
Counsel.

* * * * *

page 18 }

* * * * *

Received and filed Apr. 26, 1965.

WILLIAM R. SHELTON, Clerk
By MARGARET C. FOSTER, D. C.

* * * * *

page 20 }

* * * * *

DEMURRER

The defendants, Willard M. Ahern and Reeves M. Ahern, say that the motion for judgment filed against them in this case is not sufficient in law in that it fails to allege facts which, if proven, would entitle the plaintiffs to recover against this defendant, or either of them.

WILLARD M. AHERN
REEVES M. AHERN
By LESLIE L. MASON, JR.
Counsel.

Filed June 14, 1965.

WILLIAM R. SHELTON, Clerk
By MARGARET C. FOSTER, D. C.

* * * * *

page 22 }

* * * * *

GROUNDS OF DEMURRER

The defendants T & T Company, Inc., Karl N. Reidelbach, and B. L. Dillard, III, each by counsel, for their grounds of demurrer to the plaintiffs' motion for judgment set forth the following:

1. The motion for judgment admits that plaintiffs knew from the Termite Bureau report that termites were or had been present in the house, which knowledge would have put a reasonable man on notice that there might be termite damage to the house. Hence plaintiffs did not reasonably rely upon the representations or concealments, if any, of defendants, and cannot claim to have been misled by the fraud, if any, of defendants.

2. The motion for judgment sets forth the terms of the contract which provide only for rescission in case termite damage is found, yet, by asking for damages, plaintiffs seek to avoid those terms and still to affirm the contract of which they are the essence. Whether plaintiffs seek to affirm or avoid the contract, their only remedy is a suit for rescission in equity.

3. The motion for judgment apparently seeks relief from presently existing termite infestation, which relief could only be granted in the form of specific performance of those terms of the contract providing that the seller will stand page 23 } the cost of treatment, as set forth in paragraph 3 of the motion for judgment. Moreover, the motion for judgment alleges facts which, if proved, would make defendants liable to other parties besides plaintiffs and would give defendants rights over against other parties not named in the suit, thus requiring a multiplicity of suits and great time and expense to settle completely the liabilities of all concerned. Hence plaintiffs' proper remedy is a suit in equity in which all parties may be joined and complete relief granted.

WHEREFORE, defendants respectfully ask the judgment of the court on this, their demurrer.

T & T COMPANY, INC.
KARL N. REIDELBACH
B. L. DILLARD, III
By JOHN W. PEARSALL, III
Counsel.

Received and filed Jun 25, 1965.

WILLIAM R. SHELTON, Clerk
By MARGARET C. FOSTER, D. C.

* * * * *

page 30 }

* * * * *

ORDER

This day came T & T Company, Inc., Karl N. Reidelbach, and B. L. Dillard, III, each by counsel, and moved that the plaintiffs be ordered to file a bill of particulars to amplify the allegations of their motion for judgment in the several respects set out in said motion, and the court being of the opinion that the allegations referred to in said motion for judgment are insufficient clearly to inform the defendants of the true nature of the claims of the plaintiffs, doth ORDER that on or before July 19, 1965, the plaintiffs shall file a bill of particulars to amplify the allegations of their motion for judgment, by stating the following:

1. State specifically what representations, if any, were made by Karl N. Reidelbach, B. L. Dillard, III, T & T Company, Inc., its agents, employees, or principals, or by Willard M. Ahern or Reeves M. Ahern concerning the condition of the Ahern house or the presence or absence of termites in that house.
2. State the grounds upon which each of the above-named defendants allegedly claimed to base his representation.

3. State the time and place at which each of the representations was alleged to have been made. Identify all persons in whose presence the representations were alleged to have been made.

page 31 } 4. State whether the fraud alleged to have been perpetrated against plaintiffs consisted of the alleged withholding of the Orkin termite inspection report, the alleged representations made by any or all defendants, the alleged failure to disclose knowledge purportedly held by any or all defendants, or the failure of the Termite Bureau report to indicate specifically the presence of damage. State which defendants are charged with each particular act for which liability is asserted.

5. State whether the injury complained of is the damage to the wooden members of the house or infestation by termites or other wood-destroying agents continuing after July 2, 1964, or both.

6. State whether the infestation by termites or other wood-destroying agents has been eliminated, and if so, when it was eliminated.

7. Allege in detail the damage, if any, suffered by plaintiffs, for which liability is asserted against defendants.

8. State the grounds upon which the conclusion is drawn that any or all defendants "knew or should have known that there was, in fact, extensive damage, then existing."

9. State whether the defendants T & T Company, Inc., B. L. Dillard, III, Karl N. Reidelbach, or other agents or employees of T & T Company, Inc. are charged as acting in any other capacity than as agents of the defendants Willard M. Ahern and Reeves M. Ahern.

10. Allege in detail the act or acts for which defendant B. L. Dillard, III is charged with liability.

11. State whether prior to July 2, 1964 plaintiffs had any knowledge of the presence or absence of termites or of the existence of termite damage or knowledge of the condition of the Ahern house obtained otherwise than from defendants.

12. State whether plaintiff Walter W. Horner had ever personally inspected the Ahern house and whether

page 32 } he had ever gone under the house prior to his first contact with Karl N. Reidelbach or T & T Company, prior to April 17, 1964, prior to April 23, 1964, or prior to July 2, 1964.

13. State precisely in what manner and when plaintiffs first became aware of the alleged termite infestation or termite damage.

14. Allege in detail the efforts made by plaintiffs, if any, to get an estimate of the cost of repairing the alleged termite damage or eliminating the alleged termite infestation and the results of such efforts.

15. State whether plaintiffs have had any appraisals made of the value of the house in its present condition, and if so, the results of those appraisals.

16. State whether plaintiffs had any appraisals made of the value of the house prior to July 2, 1964, and if so, state the names of the appraisers, the purpose of the appraisals, and the value attributed to the house apart from the land by those appraisers.

17. Describe in detail the alterations and improvements made by plaintiffs to the Ahern house after July 2, 1964. State the extent to which these alterations and improvements involved complete replacement of existing members or structural modifications.

18. Describe in detail the negotiations between plaintiffs and Karl N. Reidelbach before July 2, 1964. State whether negotiations were ever had with any other personnel of T & T Company or with either of the Aherns.

19. State whether plaintiff Walter W. Horner has ever had experience in the business of selling real estate, and specifically, whether he has ever been a real estate salesman or broker.

20. State whether plaintiffs have made any efforts to determine if the damage complained of was caused by anything other than termites, and if so, state the nature of the investigations made and the results thereof.

Enter June 29, 1965.

WILLIAM OLD, Judge.

* * * * *

page 34 }

* * * * *

GROUNDS OF DEMURRER

The defendants Willard M. Ahern and Reeves M. Ahern, by counsel, state the following as their Grounds of Demurrer:

The Motion for Judgment clearly states that the plaintiffs base their cause of action on a contract described therein, which said contract allows the plaintiffs to be relieved thereunder upon their being advised of certain conditions; the Motion for Judgment goes on to state that the plaintiffs were in fact informed of such conditions as would permit the plaintiffs to be relieved; however nonetheless the Motion for Judgment states that the plaintiffs elected to consummate the contract after being advised of a condition that would have released the plaintiffs from obligation under the contract; thereby the said Motion for Judgment, on its face, fails to state a cause of action on which the plaintiffs may recover in law.

Wherefore, these defendants respectfully ask the court to sustain their demurrer, and grant judgment in this case.

WILLARD M. AHERN and
REEVES M. AHERN
By LESLIE L. MASON, JR.
Counsel.

* * * * *

page 35 }

* * * * *

Received and filed Jul 6, 1965.

WILLIAM R. SHELTON, Clerk
By MARGARET C. FOSTER, D. C.

page 36 }

* * * * *

BILL OF PARTICULARS

The plaintiffs state the particulars of their claim in this action in answer to the specific matters set forth in Order entered on June 29, 1965, herein.

1. Defendant, Karl N. Reidelbach, stated to plaintiffs that if the Termite Bureau's report did not specify that there was termite damage then there was no termite damage. This statement of Karl N. Reidelbach was made by him in his own behalf and on behalf of his employer T. & T. Company, Inc., and their principals, the Aherns.

Defendant, B. L. Dillard, III, as president of the T. & T. Company, Inc., and actively participating in the conduct of the business, knew or should have known of the previous report of Orkin and his failure to disclose said report showing termite damage in the building prior to settlement constituted a concealment tantamount to a misrepresentation of a material fact.

Defendants, Willard M. Ahern and Reeves M. Ahern knew that the presence or absence of termite damage was material to the consummation of the sale contract and knew that the dwelling house was extensively damaged by termites, yet, notwithstanding, they concealed and failed to dis-
page 37 } close the fact that they knew that the dwelling was extensively damaged by termites at the time the contract was made and at the time of settlement thereunder.

2. Defendant, Karl N. Reidelbach, in his own behalf and as employee of T. & T. Company, Inc., agent for Willard M. Ahern and Reeves M. Ahern, stated that he based his representation upon the absence of any reference to termite damages in the Termite Bureau report when he, it, and they, knew or should have known of the Orkin report which disclosed extensive damage.

3. On or about May 22, 1964, the date of a certain letter from T. & T. Company, signed by Karl Reidelbach, which enclosed the report of Termite Bureau, and shortly thereafter when Walter W. Horner, in the presence of Harriette M. Horner, called T. & T. Company, Inc., and spoke by telephone to Karl N. Reidelbach. The active or constructive fraud and deceit having commenced from the date of the receipt by T. & T. Company, Inc., of the Orkin report. Plaintiffs are not advised of the identity of any other persons present.

4. The fraud and deceit perpetrated against the plaintiffs consisted of:

Withholding of the Orkin Report as to all defendants.

Representation by Karl N. Reidelbach on behalf of himself, T. & T. Company, Inc. and Willard M. Ahern and Reeves M. Ahern, that if the Termite Bureau's report did not specify that there was termite damage then there was no termite damage.

Failure by all defendants to disclose knowledge which they knew or should have known as to the termite
page 38 } damage.

The failure of the Termite Bureau to report any termite damage accompanied by the representation of Karl

N. Reidelbach that if the report did not specify that there was termite damage then there was no termite damage, as to defendants Karl N. Reidelbach, T. & T. Company, Inc., and Willard M. Ahern and Reeves M. Ahern.

5. The injury complained of is the damage to the wooden structure of the dwelling house to the time of discovery of the termite damaged condition in August, 1964, and as thereafter discovered by uncovering of hidden damages together with the cost of expense of uncovering the damage, repairing and/or replacing damaged members and covering the repaired or replaced members and costs and expenses of decorating and renovating which will be lost in repairing the damaged dwelling house.

6. The infestation has not been eliminated.

7. (a) Value of Ahern house if not in termite damaged condition, unsalable as damaged per appraisal $12,000.00

(b) Renovations, decorations, and repairs made prior to discovery of extent of termite damage which will be damaged or destroyed by repairs due to termite damage:

M. Briel, labor and materials for carpentry work	904.82
Moore's Building & Supply Company, materials	600.00
Sears-Roebuck & Co., storm windows, installed	698.88
T. C. Winfree, plumbing labor and materials	185.00
M. & N. Roofing, porch roofs and gutter work	300.00
Dorset Hardware Co.	26.06
W. L. Wachter, electrical work	354.50
M. P. Barden, exterior and interior painting and papering	1,180.00
Chavis, sealing sheet rock walls	100.00
Lambert, tile work in shower	175.00
Punitive damages	18,075.00
Total Damages	$35,599.26

page 39 } 8. The Orkin report as to all defendants.

The fact that Willard M. Ahern and Reeves M. Ahern had lived in the property and had had it inspected for termites and termite damages on previous occasions and in each instance had received reports of extensive termite infestation and damage.

9. The defendants, T. & T. Company, Inc., acting by and through its employees, B. L. Dillard, III, and Karl N. Reidelbach, acted as agents for Willard M. Ahern and Reeves M. Ahern and T. & T. Company, Inc., and Karl N. Reidelbach

acted for themselves in their interest in obtaining remuneration for the sale of the property of their principals.

10. B. L. Dillard, III, is charged with liability for his failure to disclose the Orkin report to the plaintiffs prior to settlement for the purchase of the property.

11. Prior to July 2, 1964, plaintiffs received the Termite Bureau report which advised of an infestation of termites and reported that the dwelling had been chemically treated for the elimination and prevention of same for a period of ten (10) years or more. Plaintiffs prior to July 2, 1964, had no knowledge of the existence of termite damage in the Ahern house. Plaintiffs had inspected the house in the course of negotiations for the purchase thereof and knew its condition to the extent that a casual visual inspection would disclose its condition.

12. Neither of the plaintiffs ever went under the Ahern house at any time prior to August, 1964.

13. In August of 1964, plaintiffs were engaged in decorating and renovating the Ahern house when the workmen reported the termite damage to the plaintiffs.

page 40 } 14. Plaintiffs secured an estimate from P. C. Bowery, Jr., General Contractor, dated March 24, 1965, estimating the cost of repairing a portion of the termite damage at $3,150.00 exclusive of cost of insulation, work on inside walls, electrical work and plumbing work, and damage that might be found while the work was in progress.

15. Plaintiffs had the Ahern house appraised in October, 1964, and by letter from A. L. Adamson, Realtor, over the signature of W. B. F. Johnson, dated October 29, 1964, were informed that the dwelling, if in good condition, was valued at approximately $12,000.00, but would in the appraiser's opinion, be unsalable in its condition caused by termites.

16. Plaintiffs had no appraisal made prior to July 2, 1964.

17. Exterior: Put new roof on kitchen, storage room and front porch. New gutters and downspouts. Blinds on all windows except kitchen. Exterior wall put on back porch to enclose same for room. Three new double-hung windows and new back door. Storm windows, screens and storm doors for entire house, except for casement windows in kitchen. Painted.

Interior—upstairs: Old plaster torn out in two front rooms and replaced with sheet rock; also same in part of the small hall. Two closet doors installed. Painted and wallpapered three rooms and small hall. Additional rafters put in storage room and shelves built in same. Three new light fixtures. New window panes were needed. Repairs to existing plumbing.

Quarter-round put down in each room to cover crack between baseboard and floor. New baseboard in part of main hall.

Interior—downstairs: New front door, jamb and sill. New screen door on front porch. Repairs to existing page 41 } plumbing in kitchen and bath. New light fixtures and additional electrical work. Enclosed and pine panelled old back porch. New half-bath included in enclosed porch. Closet door installed. Shower stall tiled completely. Painted and finished walls. Patched bedroom and bathroom floor.

18. Plaintiff, Harriette M. Horner, had on several occasions discussed with Karl N. Reidelbach her desire to purchase a home near Moseley, Virginia. In reply to an advertisement in a newspaper Mrs. Horner called Mr. Reidelbach concerning the Ahern property mentioned in the advertisement. Plaintiffs looked at the property and made an offer to purchase same through Mr. Reidelbach of T. & T. Company, Inc. The offer was refused by Mr. and Mrs. Ahern. Mr. Reidelbach informed Mrs. Horner of the rejection of the offer and suggested that the Aherns might be willing to accept their offer plus one-half of the difference between the offering and asking price. Mrs. Horner instructed Mr. Reidelbach to make the new offer but this offer was rescinded by Mr. Horner in a telephone call to Mr. Reidelbach. Mr. Reidelbach called back the next day and stated that the Aherns were willing to accept the second offer. Mr. Horner then agreed thereto but instructed Mr. Reidelbach to insert a termite clause as to infestation and damages. The contract was then signed by all parties. There was no contact between the plaintiffs and the Aherns except for permission to see the house.

19. Walter W. Horner was a real estate salesman from October, 1949 to January 1951.

20. Plaintiffs have received various reports on the damages to the house, each of which reports that the damage was caused by termites.

page 42 }

WALTER W. HORNER
HARRIETTE M. HORNER
Plaintiffs
By Counsel.

Received and filed Jul 20, 1965.

WILLIAM R. SHELTON, Clerk
By MARGARET C. FOSTER, D. C.

* * * * *

page 44 }

* * * * *

ORDER

This day came again all parties to this suit, by their attorney's, and presented argument upon the demurrer to the plaintiff's motion for judgment, and upon consideration by this court it is hereby ORDERED that the demurrer of Willard M. Ahern and Reeves M. Ahern be sustained, the plaintiff's motion for judgment being insufficient in law.

Enter: Sept. 10, 1965.

WILLIAM OLD, Judge.

* * * * *

page 45 }

* * * * *

ORDER

This case came on this day to be heard on the motion for judgment as enlarged by the bill of particulars and the demurrers of the defendants as enlarged by the grounds of demurrer filed by the several defendants and was argued by counsel. And the Court being of the opinion that the motion for judgment is not sufficient in law doth sustain the several demurrers and it is ordered that this suit be, and the same hereby is, dismissed, to which action of the Court the plaintis, by counsel, duly objected and excepted.

Enter: Sept. 13, 1965.

WILLIAM OLD, Judge.

C L O B 29 Pg. 410

We ask for this:

LESLIE L. MASON, JR.
Counsel for the Defendants
Willard M. Ahern and
Reeves M. Ahern.

JOHN W. PEARSALL, III
Counsel for the Defendants
T & T Company, Inc., a Virginia
corporation, Karl N. Reidelbach
and B. L. Dillard, III

page 46 } Seen and objected to:

ROBERT R. JONES
RICHARD C. L. MONCURE
Counsel for the Plaintiffs
Walter W. Horner and
Harriette M. Horner.

page 47 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

The undersigned file this Notice of Appeal and Assignment of Error, because they are aggrieved by an Order of this Court entered on the 13th day of September, 1965, whereby the Demurrers filed by the defendants, Willard M. Ahern, Reeves M. Ahern, T. & T. Company, Inc., a Virginia corporation, Karl N. Reidelbach and B. L. Dillard, III, to plaintiff's Motion for Judgment and Bill of Particulars were sustained.

1. The Court erred in entering said Order of September 13, 1965, which sustained the Demurrers of the said defendants, Willard M. Ahern, Reeves M. Ahern, T. & T. Company, Inc., a Virginia Corporation, Karl N. Reidelbach and B. L. Dillard, III, to plaintiffs' Motion for Judgment and Bill of Particulars, as the said Motion for Judgment and Bill of

Particulars filed in said action presented and set forth a good cause of action.

WALTER W. HORNER and
HARRIETTE M. HORNER
By ROBERT RANDOLPH JONES
RICHARD C. L. MONCURE
Counsel.

* * * * *

page 48 }

* * * * *

Received and filed Oct. 28, 1965.

WILLIAM R. SHELTON, Clerk
By MARGARET C. FOSTER, D. C.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error Awarded	1
Record	2
Motion for Judgment	2
Exhibit A	5
Demurrer of T & T Company, Inc.	7
Demurrer of Karl N. Reidelbach	8
Demurrer of B. L. Dillard, III	9
Demurrer of Willard M. Ahern, et al.	9
Grounds of Demurrer of T & T Company, Inc., et al.	10
Order—June 29, 1965	11
Grounds of Demurrer of Willard M. Ahern, et al.	13
Bill of Particulars	14
Order—September 10, 1965	19
Judgment—September 13, 1965	19
Notice of Appeal and Assignment of Error	20